

1 MS. FOSHEE: Okay, let me --

2 COMMISSIONER BAKER: Right.

3 MS. FOSHEE: Okay.

4 COMMISSIONER BAKER: I don't need your opinion on
5 what's most valuable.

6 MS. FOSHEE: Sure. Let's look at --

7 COMMISSIONER BAKER: I mean, if -- but just for
8 clarification, aside from the numbers contained in column A,
9 none of these other numbers contained in the other columns
10 are within the prefiled testimony or -- of any of the
11 parties?

12 MS. FOSHEE: The -- yes, the staff actually
13 admitted the rates in column B yesterday. So that's an
14 exhibit.

15 COMMISSIONER BAKER: Okay.

16 MS. FOSHEE: Our proposed filed costs are relied
17 upon by Mr. Gillan in his testimony.

18 COMMISSIONER BAKER: Okay.

19 MS. FOSHEE: The rate in the enterprise DSO
20 platform agreement was also admitted by the Commission
21 yesterday when you took administrative notice of all the
22 commercial agreements. So I believe they are all in the
23 record.

24 BY MS. FOSHEE:

25 Q Mr. Gillan, looking at column B compared to

1 BellSouth's proposed cost, which is the cost upon which you
2 relied, do you see that that's a 36 percent margin?

3 A 36 percent between what and what? Just -- just
4 make sure I understand what you're saying.

5 Q Absolutely. If you look under column D -- and the
6 way you read this chart is you look column -- go down and
7 across.

8 A Okay.

9 Q So column D compared to BellSouth's proposed cost,
10 36 percent margin. You see that?

11 A Okay, let's -- let's go through this, just so you
12 understand the things that you don't do correctly. You're
13 trying -- this 23 percent -- now I understand what you're --
14 the 23 percent, I suppose, is you're claiming that you're
15 only making 23 percent over cost; right? But you've added
16 all this stuff up that there's no question that Momentum is
17 entitled to. The only thing the Commission should be
18 looking at, because the only rate that we're talking about
19 here is the port rate. You're taking something that has a
20 cost of \$1.50. Well, it's port plus usage plus features.

21 Q That's what you did, though; right?

22 A Port plus usage plus features. No, you added in
23 the loop to try and mask the amount by which your rates are
24 above cost. You added in the -- you have a problem that
25 says that the loop rate is \$3 lower than it should be, and

1 you're trying to make it sound like that it's relevant to
2 this calculation.

3 Loops aren't at issue here, at least these types
4 of loops. What is at issue is the switching rate. The
5 switching rate is these three items which I have to add up
6 to see if you're even close to what I think this is supposed
7 to be. Oh, I hate math.

8 You're taking something that's 6.58, you say,
9 which seems a little high, but -- and you're trying to raise
10 that rate to about \$15; okay? That's not a 23 percent
11 increase, that's like a doubling or more. All right, that
12 -- so your number here is the 50 percent -- is like a -- is
13 like whatever, 100 percent. All right? Not 23 percent,
14 when all you do is you look at the rates that are at issue
15 in this proceeding, which is switching.

16 Then you go over and you try to calculate margins
17 that Momentum has. And there's two things that you've
18 completely ignored. First of all, Momentum also has to pay
19 you for daily usage files, which is another direct cost
20 Momentum experiences that's not insignificant that you
21 haven't included.

22 And, finally, you haven't included any of
23 Momentum's costs. They have direct costs when they win
24 customers and serve them that are also not insignificant.
25 So you can't be calculating anything that -- that you can

1 characterize as a margin that Momentum experiences, because
2 ~~you've left out important cost categories for things you~~
3 charge Momentum that you didn't include that they'd have to
4 recover, and you've completely ignored any of Momentum's
5 costs, as well.

6 That is not -- those numbers are not for Momentum
7 margins above direct cost, and the number that you presented
8 for yourself you -- you tried to diminish by including rate
9 elements that aren't at issue in the proceeding. So you've
10 understated yours by a giant amount, and you've overstated
11 theirs by a giant amount. And the -- and the chart is
12 totally worthless for any point that you're hoping to make.

13 Q Did you review the staff's recommendation that was
14 approved by the Commission today, Mr. Gillan?

15 A Only the rates in it.

16 Q Okay. So you didn't look at the estimated usage
17 that was in what is now the Commission's order?

18 A No, I did not.

19 Q Okay. So if -- if, in fact, that 2.55 was drawn
20 from the Commission-approved rates, you wouldn't know that?

21 A I have not checked it against that figure. I used
22 an estimated usage from ARMIS that you had used. But,
23 again, you know what, it doesn't matter because you could
24 make that a dollar -- make that line a dollar or make it \$3.

25 I don't care. Everything else you did with this that is so

1 completely wrong just makes it -- I'm trying to think of a
2 polite term for it. And a polite term is escaping me.

3 Q Go ahead and use the heroin dealer thing again,
4 because that was so relevant.

5 A I'm glad you read the footnotes, Ms. Foshee.

6 Q Would 149 percent margin be just and reasonable in
7 your opinion?

8 A There is no 149 percent margin here.

9 Q Let me ask hypothetically. Would a 149 percent
10 margin be just and reasonable in your opinion? Yes or no?

11 A No. But margin, as people who do any of this kind
12 of work typically refer to it, is --

13 You got to be more specific. Because there's like
14 a gross margin and a net margin. The number -- the number
15 that's comparable to the 20 percent I gave you is a
16 contribution to common cost and overhead above direct cost.

17 You did not make any attempt in this chart to calculate
18 Momentum's direct cost because you didn't include any of
19 their costs, and you understated what you charge them.

20 Every time you ask me about one of these
21 percentages, I feel compelled to explain to you again how
22 wrong your calculations are. And I really don't want to use
23 up the Commission's time that way. So if I could just have
24 a standing criticism of the -- of the document, I'd
25 appreciate it.

1 Q Did you look into any of the margins of any of
2 your clients before you filed this testimony?

3 A My clients operate in a competitive market. I
4 mean, my -- the problem I have with your testimony is you
5 all want to pretend you're competitive when you can't find a
6 competitor. They operate in a competitive marketplace.
7 Whether it's today or six months from now, I will -- I'm
8 confident that competitive forces will drive their margins
9 to normal operating levels, where at the very least they
10 have to compete against you, much less each other.

11 You don't have that. That's the problem.

12 Q Mr. Gillan, what happens to your eight clients
13 that have signed commercial agreements if this Commission
14 adopts the rate that you're proposing?

15 A I have not reviewed those agreements. I know
16 this: They have no problem with the Commission adopting the
17 rates that I'm proposing.

18 Q So you think it's fair for the four clients who
19 actually have UNE-P that you're representing here to get a
20 lower rate than your eight clients who have signed
21 commercial agreements and are bound by those for the next at
22 least year-and-a-half?

23 A First, I don't know that they're bound by them. I
24 don't know what they signed in those agreements. Secondly,
25 even if they're bound to them for the next year-and-a-half,

1 it means they'd have a chance of survival after that.

2 There's -- the Commission can't deny the creation
3 of a just and reasonable rate in this proceeding because
4 some people signed commercial -- signed other agreements
5 that may have limited their options. None of those carriers
6 is asking the Commission to do this. The only carrier
7 that's making this point is BellSouth, and that ought to be
8 enough for you to understand its legitimacy.

9 MS. FOSHEE: Thank you. That's all the questions
10 I have.

11 COMMISSIONER BAKER: Any redirect, mister --
12 Okay. Mr. Magness, you want five minutes?

13 MR. MAGNESS: Just five minutes. Appreciate it.

14 COMMISSIONER BAKER: Okay, we will take a quick
15 five minute break.

16 (A short recess was taken.)

17 COMMISSIONER BAKER: Mr. Magness, do you have any
18 redirect for your witness?

19 MR. MAGNESS: Yes, Commissioner.

20 REDIRECT EXAMINATION

21 BY MR. MAGNESS:

22 Q To speed things up, there are a few things I'm
23 going to want to hand out. The first item.

24 MR. WATKINS: Mr. Chairman.

25 COMMISSIONER BAKER: Show Ms. Foshee what you're

1 handing out?

2 MR. MAGNESS: Yes, first is just a reproduction of
3 the summary boards that Mr. Gillian used yesterday. We
4 intended to provide these to the Commission yesterday and
5 didn't. The second is a discovery response that we'll
6 discuss in cross. The third is a trade secret item, this
7 page with the chart. It's just a larger print version of
8 the last page of CompSouth Exhibit 1 that was admitted
9 yesterday. CompSouth Exhibit 1, last page, it's just blown
10 up so the numbers are bigger.

11 MS. FOSHEE: I need to see Exhibit 1.

12 MR. MAGNESS: Well, here's Exhibit 1.

13 MS. FOSHEE: Okay.

14 MR. MAGNESS: Same thing. So we would certainly
15 admonish the witness and all others not to reveal any of the
16 numbers in that last item, because it is part of the
17 confidential exhibit.

18 BY MR. MAGNESS:

19 Q Okay, Mr. Gillian, Ms. Foshee asked you to accept
20 something about CompSouth subject to check, would you accept
21 that there are 20 members of CompSouth?

22 A Yes.

23 Q Not including AT&T and MCI?

24 A I accept that.

25 Q And Ms. Foshee was discussing why particular

1 members at CompSouth would be, I guess, interested in the
2 case. And let me -- if I can approach the witness and just
3 show him these summary boards.

4 COMMISSIONER BAKER: Just identify the summary
5 boards for the record, so there's some reference later.

6 MR. MAGNESS: Commissioners, this is the summary
7 chart that shows the loop high capacity loop rates posed by
8 CompSouth.

9 BY MR. MAGNESS:

10 Q And Mr. Gillian can you see this?

11 A Yes.

12 Q Okay, and this is also what we handed out a moment
13 ago, that's included in that package. This shows the high
14 capacity loop rates that you're proposing in your testimony.

15 If BellSouth's proposal of what that rate should be is
16 accepted, what is that rate for the DS1 digital loop?

17 A Yeah, and I'll just go to that one, because that's
18 where most of the demand is and there are higher rates for
19 all of these. But the thing -- on that first line there,
20 the loop to serve a medium sized business customer that a
21 CompSouth member today pays \$50 for under 251, where it's
22 listed we're proposing a just and reasonable rate of \$80 --
23 roughly \$86, about a 75 percent increase. The charge that
24 BellSouth would apply under its interstate access tariff is
25 \$179.15, this is -- this is not a small issue here. Because

1 you can imagine, customers have been gone out and attracted
2 under a system where you're paying \$50 a month to connect to
3 those customers, even raising it to \$85-\$86 is going to have
4 an impact, 117 effectively three and a half times that would
5 be impossible.

6 Q And similarly if we look at the chart that you
7 prepared on transport rates, again, this is from Mr.
8 Gillian's summary charts to his testimony. The -- again if
9 you compare the transport to what BellSouth would --

10 A Yes. Nothing is as easy as you hope. I did it
11 just for a DS1 transport to illustrate it and I assumed it
12 was ten miles. If you look under ten miles, it would be
13 about \$36 at TELRIC rate.

14 Q When you say \$36, are you combining DS1
15 termination and per miles?

16 A Yeah, you have to put those together, pay about
17 \$36 today; under our proposal that would go up to about \$45;
18 BellSouth would want for that same ten-mile transport link,
19 \$257.

20 Q Okay, and then --

21 A Actually, while you're on that one, because DS3
22 transport, today under our proposed rate we're talking about
23 \$471 for a ten-mile loop -- or for a ten-mile DS3.
24 BellSouth's charge for that would be \$2436.

25 Q Okay, and finally, on the switching element where

1 you have a proposed rate, a flat rate of \$6.86, how does
2 that compare to what BellSouth would charge for that?

3 A Again, under the staff -- and by the way, my usage
4 -- the usage assumptions I used I've been able to look at a
5 little bit, they're very close to what the staff used. So
6 there's no issue being introduced by different usage
7 assumptions. On average staff rates produce a rate of
8 \$4.18. We're proposing a flat rate, it's fixed, give them
9 the money of \$6.86, BellSouth would want for that same usage
10 level \$11.18. So in effect we're proposing TELRIC plus
11 \$2.88, which is the 65 percent increase and BellSouth would
12 be almost, you know, over \$11 to -- for something that is
13 used along with a loop to serve basic residential and
14 business customers.

15 Q And that rate you mentioned TELRIC plus, how much?

16 A \$2.88 is the premium above Bell -- above the
17 staff's calculation of TELRIC.

18 Q Okay, and when we looked yesterday at the Exhibit
19 CompSouth 1 --

20 A I'm sorry, \$2.78, yeah.

21 Q Okay, and when we looked at the Exhibit CompSouth
22 1, which we reproduced the last page of, the confidential
23 page here --

24 A Yes.

25 Q -- how does that compare, you say the CompSouth's

1 proposal is TELRIC plus \$2.86.

2 A On that \$2.78.

3 Q \$2.78, and how does that compare with this -- with
4 the standard, the S category, standard rate that's in most
5 of those commercial agreements?

6 A Well, it'd be TELRIC plus \$7.00.

7 Q Okay, and then are there any that are different?

8 A Yes, there were five carriers that negotiated --
9 negotiated rates.

10 Q And those are reflected in this attachment from
11 CompSouth 1?

12 A Yes, and I won't give any of the numbers, but
13 you'll see that for four of them the ending rate is not
14 significantly different then TELRIC plus \$7.00. But there's
15 one carrier, carrier 12 that is if -- if that chart is
16 accurate and it's BellSouth's chart and their witness
17 testified yesterday that it's accurate, our proposal in this
18 docket is significantly higher than the rate that they
19 voluntarily have provided to carrier 12.

20 Q And Ms. Foshee also talked to you a bit about
21 carriers' motivations for signing commercial agreements, do
22 you remember that?

23 A Yes.

24 Q And I'd ask you to look at the other document that
25 I've handed out, which is ITC^DeltaCom Communications Inc.

1 response to BellSouth Telecommunication Inc. first set of
2 discovery requests in this proceeding, do you have a copy of
3 that?

4 A No.

5 Q Wow, I think everyone else does. Okay.

6 A Thank you.

7 Q And we just reproduced one of the pages of the
8 response attachment A concerning ITC^DeltaCom's residential
9 local service offering. Could you explain to us what your
10 examination of this discovery response indicated about at
11 least one carrier, ITC^DeltaCom's, history with its
12 commercial agreement?

13 A Yeah, ITC^DeltaCom signed a commercial agreement.
14 As it was getting ready to negotiate -- as it was
15 negotiating that commercial agreement, which I think they
16 signed in April of '05, it started out the year offering
17 residential service, with the service described here with
18 all these features and calling bundled in it around, of
19 around \$35 a month. As they were negotiating and realized
20 the type of prices that BellSouth was requiring, they
21 increased it by \$5.00 a month. Now, they signed the
22 agreement and -- but that doesn't mean -- this is a perfect
23 illustration of of carriers signing an agreement, but not
24 because they believe that the agreement is sustainable or
25 gives a competitive opportunity at all. They sign it. They

1 raise the rate now up to \$50 a month. So, it's had an
2 increase of \$15 a month and then that just takes them into
3 the November time frame when they abandoned the residential
4 market entirely -- entirely and withdraw.

5 And while this is one carrier, I think when you
6 look at the pattern of the -- of the competitive lines under
7 the so-called commercial agreements, they're not commercial
8 and they're not agreements, they are people who have one
9 provider in the marketplace, BellSouth, put in an
10 environment where they can't handle moves, adds, changes,
11 whatever without having some sort of agreement with
12 BellSouth. But this interrogatory response illustrates
13 quite well that you can't conclude from the fact that
14 someone signed an agreement with the idea that somehow the
15 rates in that were considered reasonable. They're
16 reasonable, if what you want to do is get out of the market
17 in six months -- well, they're not even reasonable then.
18 But, you know, that's all it showed, is that they needed a
19 bridging amendment to get them out of the market and the way
20 they wanted to access. And that -- obviously 271 is not
21 about transitioning carriers to a smoother market, access
22 market abandonment.

23 Q Now, Ms. Foshee referenced -- I think she kept
24 saying eight CompSouth members had commercial agreements, I
25 guess, if you delete AT&T and MCI from that list, that would

1 be six according to her representation, right?

2 A I have no idea, she's never -- she never used the
3 names of the carriers. I think she had already deleted AT&T
4 and MCI ahead of time.

5 Q Okay.

6 A But, you know, this is about loops, transports and
7 switching. It isn't only about switching. Switching people
8 had dire consequences earlier than loops and transports, but
9 the pricing issue and the pricing testimony is -- is about
10 all three elements.

11 Q And to your knowledge are there members of
12 CompSouth who are actively in the market trying to provide
13 services that use DS1 loops and the DS1 and DS3 transport?

14 A Absolutely, I mean, for -- for carriers that are
15 using their own switches is a practical matter, that's the
16 primary market that they're trying to address. Carriers,
17 not traditional phone customers, but customers that have
18 reached a point where they want a digital high speed
19 connection for voice and data combined. And the way you
20 connect to those customers are DS1s. So, what those -- the
21 prices those carriers face for DS1 are a fundamental input
22 to their business and whether or not they can continue to
23 serve medium sized business customers in Georgia.

24 Q And do you typically experience any problems
25 getting input from such clients as you prepared testimony

1 for CompSouth?

2 A I've never had client input problems in the sense
3 that they were shy. Mr. Watkins is, after all, one of my
4 clients.

5 Q Exhibit A. On those loops and transport rates,
6 there was discussion with Ms. Foshee concerning special
7 access and the use of special access instead of UNEs. The
8 paragraph 664, the "might" paragraph that we talked a whole
9 lot about, that was in the TRO, right?

10 A That's correct.

11 Q Issued in 2003, thereabouts?

12 A Okay, I'll accept that subject to check, yeah.

13 Q And then you discussed some analysis the FCC did
14 with the hideous irony analysis you talked about, was that
15 in the TRO or the TRRO?

16 A That was in the TRRO at the end of the follow-up
17 proceeding of the TRRO. So, that would have been the FCC's
18 first time that it actually even looked at whether special
19 access might be usable for local exchange services. Now,
20 admittedly they did do it for a different purpose, they did
21 it for impairment instead of looking to see whether or not
22 there was enough competition for pricing. But they did look
23 at those special access prices in more detail for the
24 question that's really relevant here, and that is, is that
25 any evidence that these price levels can support

1 competition? And they concluded that there isn't. I think
2 when you look at those, you know, \$50 going to \$179.00,
3 that's a dramatic change in a carrier's cost structure.

4 Q And just -- just on this matter, just to be sure
5 it's clear for the record, the -- the impairment test for
6 loop and transport in the TRRO, I think you referenced they
7 are based on proxy tests. And what -- what in your mind, I
8 guess, what I'm trying to get is, what is the difference
9 between the FCC saying there's plenty of competition there
10 therefore there's no impairment versus what they did in
11 using those test?

12 A I'll give the clearest example, I think in Atlanta
13 there's a down -- there's a wire center in downtown Atlanta
14 where the application of these criteria mean that DS1 loops
15 aren't going to be available to serve any of the businesses
16 served by that wire center under 251, you know, the way the
17 these criteria apply. What did the Commission look at, and
18 I mean, you look at this because this is what the FCC test
19 required you to look at. You looked at, how many business
20 lines are served by that wire center. How big is this area
21 in downtown Atlanta, how many lines are there? And then you
22 look to see how many carriers have actually collocated in
23 the wire center, the building that the loops run out to, all
24 right. There's no information there at all that tells you
25 whether there's a single other way to reach those customers

1 than to buy loops from BellSouth. Because nowhere in that
2 test do you actually answer the question hey, in this
3 downtown area there's all these customers, carriers are
4 today serving those customer, buying loops from BellSouth to
5 reach them, can they go buy loops from somebody else. You
6 don't look at that at all. And it's a bad -- it's my
7 opinion it's a bad proxy, but that's what the FCC set up.
8 So, all you did is you decided or applying the FCC criteria
9 you conclude yes, there's a lot of business lines in this
10 wire center, which you would expect, since there are a large
11 number of CLEC that have collocated there to buy the loops.
12 But now because of that criteria you're going to take away
13 their ability to reach all those customers under 251. And
14 if BellSouth had their way you would replace it with hey,
15 you've got to pay \$179.00 now to reach all these customers
16 instead of what we're proposing of \$86.00.

17 Nowhere in that analysis that the FCC or that the
18 Commission did, did anyone ever look out the window and say
19 is there any other way to reach these customers other than
20 BellSouth's loops? Is there a single other carrier that has
21 any loops that go out to these businesses. And as a
22 practical matter there's very, very -- it's very unusual to
23 be able to find another carrier that has built facilities in
24 the individual buildings that you can go buy loops from.
25 That's -- for better or for worse, mostly worse, that's what

1 FCC criteria called for, but, the backstop -- the
2 competitive backstop -- the competitive protection is all
3 right, you still get to pay just and reasonable 271 rates.

4 Q And just one final thing, to -- I want to discuss
5 some of the questions that were raised about your
6 methodology for establishing just and reasonable rates. Ms.
7 Forshee noted that there were -- that you had proposed
8 different rate levels as to switching in an FCC proceeding
9 and then in this proceeding. And what additional
10 information was available to you in this case that supported
11 the methodology you're supporting here?

12 A I used the BellSouth cost studies that their
13 witnesses identified as their belief at capturing their
14 total forward looking costs. That information was not
15 available in the other -- the other times that a rate
16 proposal had to be made.

17 It's -- quite frankly, it just keeps showing why
18 the state should do rate settings, the FCC is not good at
19 setting rates, because the parties don't have an opportunity
20 to collect the information.

21 Q And that -- that approach based on using forward
22 looking costs, you think is appropriate?

23 A I think it still overstates what BellSouth should
24 be getting for these facilities. But as I indicated
25 yesterday as candidly as I felt comfortable, we recognize

1 that BellSouth wants to appeal this and we wanted to take
2 away as many appeal points as we possibly could take. And I
3 don't see how they're going to go to a judge and tell the
4 judge that somebody using their cost studies and then giving
5 them more money than they had asked for somehow is producing
6 rates that's unreasonable. They're not going to get there
7 with that.

8 Q How does the methodology that you propose compare
9 to what's called the new services methodology?

10 A It is basically the new services methodology. It
11 is a direct cost, plus reasonable contribution, the common
12 cost and overhead methodology. It's what the FCC calls the
13 new services test.

14 MR. MAGNESS: Okay, that's all I have. Thank you.
15 I would like to offer into evidence, I believe it's going
16 to be CompSouth 4, the ITC^DeltaCom response to BellSouth's
17 discovery request, the excerpt that we used in cross
18 examination.

19 CHAIRMAN WISE: So entered.

20 (The document referred to was
21 marked for identification as
22 CompSouth Exhibit Number 4 and
23 received in evidence.)

24 MR. MAGNESS: In addition, we'd ask that the
25 information that we handed out, the summary sheets just be

1 included as a demonstrative exhibit.

2 CHAIRMAN WISE: As an exhibit?

3 MR. MAGNESS: Yes, we can call it CompSouth 5.

4 CHAIRMAN WISE: Okay.

5 MR. MAGNESS: Or illustrative, I'm sorry, not
6 demonstrative.

7 CHAIRMAN WISE: Marked and entered.

8 (The document referred to was
9 marked for identification as
10 CompSouth Exhibit Number 5 and
11 received in evidence.)

12 MR. MAGNESS: CompSouth 5, and finally, we would
13 ask that Mr. Gillian's testimony be moved into the record.

14 CHAIRMAN WISE: Will do.

15 (Whereupon, the prefiled testimony of Mr.
16 Gillan follows:)

1 CHAIRMAN WISE: Ms. Foshee?

2 MS. FOSHEE: Thank you, Mr. Chairman, I was
3 remised and forgot to mark three of the exhibits that we
4 used. If we could mark the Tennessee testimony of Mr.
5 Gillan, as BellSouth 3.

6 The Momentum web page as BellSouth 4.

7 And the chart entitled UNE-P DSO with features as
8 BellSouth 5. I haven't moved them yet I just marked them.

9 (The documents referred to were
10 marked for identification as
11 BellSouth Exhibits 3, 4 and 5.)

12 MS. FOSHEE: Those are the only three that I would
13 like to mark. And now, Mr. Chairman, I'd like to move those
14 into the record, please.

15 CHAIRMAN WISE: They'd be put into the record.

16 MS. FOSHEE: Thank you.

17 (The documents, heretofore marked
18 as BellSouth Exhibits 3, 4 and 5,
19 were received in evidence.)

20 MR. MAGNESS: Commissioner, we -- we very strongly
21 object to this chart. I think based on what we've heard,
22 there's no foundation laid for this to be into evidence.
23 Ms. Foshee kept trying and trying to lay some sort of
24 foundation through cross examination. Mr. Gillan kept
25 telling her that -- this -- that this was meaningless, it's

1 not evidence. And if BellSouth had wanted to lay a
2 foundation to put this in through one of its own witnesses,
3 it had every opportunity, it didn't. It's not evidence.

4 CHAIRMAN WISE: Commissioner Baker, please.

5 COMMISSIONER BAKER: Mr. Magness, I understand the
6 basis of the objection, but since it was so extensively
7 dissected by Mr. Gillan, I think he --he made it very clear
8 what he thought of the exhibit and showed the shortcomings
9 of it and so, for reference purposes in the record I'm going
10 to rule to leave it in.

11 MS. FOSHEE: And then just lastly as a
12 housekeeping matter I'll remind the Commission that we do
13 have a pending motion to dismiss this proceeding; again, we
14 don't need to argue it. But at some point it probably needs
15 to be ruled on.

16 CHAIRMAN WISE: Motion denied. Thank you very
17 much.

18 Anything further, Commissioners?

19 (No response.)

20 CHAIRMAN WISE: Thank you very much.

21 (Whereupon, the hearing was concluded at 3:05
22 p.m.)

23

24

C E R T I F I C A T E

I, Peggy J. Warren, do hereby certify that the foregoing pages represent a true and accurate transcription of the events which transpired at the time and place set out in the caption, to the best of my ability.

Peggy J. Warren, CVR-CM, CCR A-171